

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN RADIO SERVICES CO.,

Defendant.

Case No. 3:13-CV-1186-SI

ORDER DENYING STAY

Michael H. Simon, District Judge.

In the related case numbered 3:11-cv-638-SI (D. Or.), this Court granted summary judgment to Plaintiff, referred to as the “Forest Service,” on, among other things, its claims against Defendant Western Radio Services Co. (“Western Radio”) for breach of lease and trespass. The Court also ordered the removal of Western Radio's trespassing tower. The Court then granted in part Western Radio's motion for stay pending appeal and waiver of bond. The Ninth Circuit, in appellate case numbers 12-36082 and 13-35541, affirmed. This Court then extended the stay at Western Radio's request while Western Radio petitioned the U.S. Supreme Court for a writ of certiorari. After the Supreme Court denied Western Radio's petition, this Court lifted the stay.

In the present case, case number 13-cv-1186 (D. Or.), this Court granted the Forest Service's motion for summary judgment and declared that the Communications Use Lease between the Forest Service and Western Radio, designated CRE09 and issued December 17, 2000, was properly revoked by the Forest Service and is cancelled. Dkt. 64. Defendant Western Radio then moved for an order staying this Court's Judgment pending appeal. This Court granted that motion in part, staying the Judgment in this case only while Western Radio pursued its appeal in the related case, Ninth Circuit appellate case number 13-35541, and further ordering that this stay shall expire upon the issuance of the appellate mandate in that appeal. After that occurred, Western Radio filed its pending motion for stay and for injunction pending appeal, while this case is now on appeal before the Ninth Circuit, in appellate case number 14-35382. The Forest Service opposes Western Radio's motion on both jurisdictional and substantive grounds. Based on the Ninth Circuit's decision in appellate case number 13-35541, this Court finds that Western Radio would not be entitled to the relief it currently seeks, even if this Court has jurisdiction to consider Western Radio's current motions.

Defendant Western Radio Services Co., Inc.'s Renewed Motion for Injunction and Stay Pending Appeal (Dkt. 75) and Western Radio's related Motion for Waiver of Bond (Dkt. 77) are both DENIED.

IT IS SO ORDERED.

DATED this 13th day of October, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge